IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

MACON COUNTY INVESTMENTS, INC.; REACH ONE; TEACH ONE OF AMERICA, INC.,	)	
PLAINTIFFS,	)	
v.	)	**CIVIL ACTION NO.: 3:06-cv-224-WKW**
SHERIFF DAVID WARREN, in his official capacity as the SHERIFF OF MACON COUNTY, ALABAMA,	)	
DEFENDANT.	)	

PLAINTIFFS' RESPONSE IN OPPOSITION TO MOTION TO INTERVENE

COME NOW the Plaintiffs Macon County Investments, Inc. ("MCI") and Reach One, Teach One of America, Inc. ("Reach One, Teach One"), hereinafter collectively referred to as "the Plaintiffs," and hereby file their Response in Opposition to the Motion to Intervene. The Plaintiffs state the following:

1. On March 9, 2006, the Plaintiffs file a Complaint for Declaratory and Injunctive Relief, an Application for Preliminary Injunction and a Motion for the Commencement of Early Discovery.

2. The Plaintiffs seek, *inter alia*, a declaratory judgment that their rights under both the Alabama Constitution and the Equal Protection Clause of the United States Constitution are violated by certain changes the Sheriff of Macon County, Alabama made to the Macon County Bingo Regulations ("First and Second Amended Rules").

3. On July 14, 2006, Tuskegee County YMCA, Little Texas Volunteer Fire Department, Inc., Macon County Healthcare Authority, Macon County RSVP Council, Inc.,

Macon Russell Community Action Agency, Inc., and the City of Tuskegee, Alabama ("Interveners") filed a Motion to Intervene.

4. The Interveners assert intervention as of right pursuant to Fed. R. Civ. P. 24(a)(2) or, in the alternative, request permissive intervention pursuant to Fed. R. Civ. P. 24(b).

5. The Eleventh Circuit has adopted a four pronged test for evaluating requests for intervention under Fed. R. Civ. P. 24(a)(2). The elements of the test are: (1) whether the application is timely; (2) whether the party seeking intervention has an interest relating to the property or transaction which is the subject of the litigation; (3) whether the intervener is so situated that as a practical matter, refusal may impede or impair his ability to protect that interest, and (4) whether his interest is represented inadequately by existing parties. *Stone v. First Union Corp.*, 371 F.3d 1305, 1308-1309 (11th Cir. 2004).

6. The Interveners state that, because they hold Class B Macon County Bingo licenses, they have an interest in seeing that the Defendant is allowed to act under the First and Second Amended Rules. The Interveners avoid clarifying just what that right is.

7. The type of interest necessary to sustain intervention as of right must be one that is "direct, substantial and legally protectable. *Mt. Hawley Ins. Co. v. Sandy Lake Properties, Inc.*, 425 F.3d 1308, 1311 (11th Cir. 2005). A legally protectable interest is something more than an economic interest. *Id.* at 1311. The interest must be one which the substantive law recognizes as belonging to or being owned by the applicant. *Id.*

8. The Interveners cite *United States v. South Florida Water Mgt. Dist.*, 922 F.2d 704 (11th Cir. 1991) for the proposition that they have a legally protectable interest in

substantive, administrative policies that directly affect their legal status. (Motion to Intervene at ¶ 8.) However, *South Florida* is inapposite to the case at bar and does not support the Interveners' request.

9. In *South Florida*, the interveners had a legally protectable right because the statute in question provided the interveners with the right to participate in the development of the plan in question. *South Florida*, 922 F.2d at 708. The right was also direct because it was the right to participate in the setting of numeric standards, and was substantial because it was the interveners only means of protecting their right to the Water District's services. *Id.*

10. In the instant case, the statute which authorizes bingo in Macon County expressly provides that the Sheriff of Macon County "shall promulgate rules and regulations for the licensing and operation of bingo games within the county." Ala. Const. (1901) Amend. 744. The Alabama amendment does not accord any other person or entity the statutory right to participate in the development of those rules and regulations as was the case in *South Florida.* The Interveners have no substantively legal, legislatively granted right to participate in setting the rules for issuance of licenses or standards for the conduct of the games themselves. That is the sole purview of the Sheriff. The Interveners have "no legally protectable right to participate in the administrative development of the standards themselves." *South Florida*, 922 F.2d. at 709.

11. Contrary to the Interveners' assertion, the possession of a license does not provide a substantive, legally protectable right to participate in rule making, or serve as a basis for intervention as of right. Alabama law is clear that licenses of this nature

confer a privilege, not a substantive legal right as required to support intervention as of right. *See Potts v. Bennett*, 487 So.2d 919, 923 (Ala. Civ. App. 1985)(holding that a liquor license does not confer a property right or a vested interest)(citation omitted).

12. At most, the Interveners have an economic interest in continuing to operate bingo games and in blocking the competition that a new facility and new licensees would bring. However, a legal interest, not an economic one is necessary to support intervention. *See South Florida*, 922 F.2d at 710; *Mt. Hawley*, 425 F.3d at 311. Having nothing other than an economic interest in the issues at bar, the those seeking intervention are not entitled to such as of right.

13. The second hurdle to intervention as of right is a showing that without intervention the party will be, as a practical matter, impeded or impaired in its ability to protect its rights. *Stone*, 371 F.3d at 1308-1309. A careful reading of the Interveners' motion will show that they make no showing at all with respect to this requirement. Unable to articulate a legal interest, they are likewise unable to articulate how, as a practical matter, they will be impeded in protecting that "right." Without such a showing, Interveners are not entitled to intervention as of right.

14. Finally, as to intervention of right, the Interveners claim that the Sheriff may not adequately represent their "interests." However, the goal of the Sheriff is to uphold the constitutionality of the First and Second Amended Rules. This is the same "interest" identified by the Interveners. (Motion to Intervene at ¶ 9.) Because they have identical interests, the Court may presume that the Interveners' "interest" is adequately represented. *See Athens Lumber Co. Inc. v. Federal Election Comm.*, 690 F.2d 1364, 1366 (11th Cir. 1982)(holding that where the objectives are identical, a

public agency can adequately represent the individual member of the public).

15. The Interveners' reliance on *Chiles v. Thornburgh,* 865 F.2d 1197 (11th Cir. 1989) and *Clark v. Putnam County,* 168 F.3d 458 (11th Cir. 199) as to the adequacy of representation is also faulty. In *Chiles*, the detainees with whom the Interveners would like to equate themselves had a constitutional interest in the conditions under which they were incarcerated. *See Chiles*, 865 F.2d at 1214. Having no such constitutional right, the Interveners in the instant case are more analogous to the homeowners who were denied intervention in *Chiles* because they had the exact same interest as the County. *Chiles*, 865 F.2d at 1215.

16. In *Clark*, the County and the County Commission were the defendants and stated in both district and appellate Court that they would represent the interest of all of citizens of the county. *Clark*, 168 F.3d at 461. In the instant case, the defendant is the Sheriff in his official capacity. He is not representing the citizens, but defending the constitutionality of certain rules promulgated under the auspices of his office. Therefore there is no potential conflict as there was in *Clark.*

17. Further, there are no real concerns that the Sheriff will balk at litigation expenses or not vigorously defend the constitutionality of the rules in question. The Rules and Regulations, in all three of their incarnations, provide that the revenues acquired through bingo operations will be disbursed to the Sheriff for use in general law enforcement activities. *See* Macon County Bingo Regulations § 8. There is no likelihood that the Sheriff will balk at the expense of vigorously defending the constitutionality of the regulations that provide a large cash flow to be used at his discretion for law enforcement in the county.

18. Having failed to (1) articulate a legally protectable, substantial and direct interest, (2) show their ability to protect that "interest" would be impeded or impaired; and (3) demonstrate that the Sheriff would not adequately represent any such interest if it actually existed, the Interveners are not entitled to intervention as of right.

19. In the alternative, the Interveners seek permissive intervention pursuant to Fed. R. Civ. P. 24(b). Permissive intervention may be allowed "where a party's claim or defense and the main action have a question of law or fact in common and the and intervention will not unduly prejudice or delay the adjudication of the rights of the original parties." *Mt. Hawley*, 425 F.3d at 1312.

20. However, Rule 24(b) permissive intervention is discretionary with the Court and may be properly denied even when there are common questions of law or fact and the other requirements of Rule 24(b)(2) are otherwise satisfied. *CIBA Specialty. Chems. Corp. v. Tensaw Land & Timber Co.*, 233 F.R.D. 622, 628 (S.D. Ala. 2005). The Court's decision is reviewable only for a clear abuse of discretion. *Manasota-88, Inc. v. Tidwell*, 896 F.2d 1318, 1323 (11th Cir. 1990).

21. As discussed *supra*, the Interveners' assertion and objective is identical to the Sheriff's. The duplicative nature of those assertions would unduly delay the adjudication of the rights of the parties in the law suit and make it unlikely that any new light will be shed on the issues to be adjudicated. *See Chiles,* 865 F.2d at 1215 (denying permissive intervention).

22. Further, as indicated by the Plaintiffs' request for a preliminary injunction and expedited discovery and the fact that Plaintiffs have already made expenditures towards building a bingo facility, time is of the essence in this matter. Interveners

promises not withstanding, the addition of six new parties to this action must engender a delay in both discovery and in litigating this matter that may cause harm to the parties already involved. Despite Interveners' claims that they are "entitled" to permissive intervention, the Court has sound reason for denying Interveners' motion.

WHEREFORE premises considered, the Plaintiffs respectfully request that the Court deny the Motion to Intervene.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all counsel of record via this Court's electronic filing system on this the 15th day of August, 2006.

/s/ Ramadanah M. Salaam-Jones

OF COUNSEL